

NTSB Order No. EA-5104

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 20th day of July, 2004

Respondent.

Docket SE-17108

The respondent has appealed from an oral initial decision Administrative Law Judge William R. Mullins rendered in this proceeding on June 22, 2004, at the conclusion of an evidentiary hearing.¹ By that decision, the law judge affirmed an emergency order of the Administrator revoking respondent's pilot and medical airman certificates for his alleged violations of sections 61.23(a)(2) and 67.403(a)(4) of the Federal Aviation

7647

Regulations, "FAR," 14 C.F.R. Parts 61 and 67.² For the reasons discussed below, the appeal will be denied.

The Administrator's May 20, 2004 order, which served as the complaint before the law judge, alleged, among other facts and circumstances concerning the respondent, the following:

1. You are now and at all times mentioned herein were, the holder of Airline Transport Pilot Certificate No. 001658726. You currently hold a First Class Airman Medical Certificate.
2. At all times material to the allegations contained herein, you did not hold a valid second class airman medical certificate for commercial operations in that your second class airman medical certificate expired on December 31, 2003.
3. However, on January 26 and January 28, 2004, you acted as Pilot in Command of civil aircraft Cessna 210, N6212B, carrying passengers on board for compensation or hire.

²FAR sections 61.23(a)(2) and 67.403(a) provide, in relevant part, as follows:

§ 61.23 Medical certificates: Requirement and duration.

(a) *Operations requiring a medical certificate.* Except as provided in paragraph (b) of this section, a person:

* * * * *

(2) Must hold at least a second-class medical certificate when exercising the privileges of a commercial pilot certificate...

§ 67.403 Applications, certificates, logbooks, reports, and records: Falsification, reproduction, or alteration; incorrect statements.

(a) No person may make or cause to be made—

* * * * *

(4) An alteration of any medical certificate under this part.

4. For your services, you received compensation in the approximate amounts of \$647.50 and \$828.00.
5. On February 25, 2004, Federal Aviation Administration Aviation Safety Inspector (ASI) Joseph Murphy of the Dallas Flight Standards District Office conducted a base inspection at Voyager Air Center, a single-pilot Part 135 air operator of which you are its President and Chief Pilot.
6. During the base inspection, you were asked to present your airman medical certificate.
7. You presented to ASI Murphy, and he made a photocopy of, First Class Airman Medical Certificate No. FF-1884266 with an altered examination date, that is, the original examination date on the certificate, "12/13/2002," was written over to appear as "12/13/2003."
8. By letter dated March 6, 2004, you advised Inspector Murphy that you had "overlooked the expiration date" on your medical certificate.

The respondent did not contest the allegations that he had conducted the two flights when he did not possess at least a second-class medical certificate. The law judge, accordingly, found the FAR section 61.23 charge had been proved and determined that the single issue to be resolved at the hearing was whether respondent had altered the examination date on his medical certificate, in violation of FAR section 407, as alleged. The law judge did not credit respondent's denial of responsibility for the alteration.

Although respondent's brief asserts that the law judge "misapplied the applicable law" and made "several critical erroneous findings of fact and legal conclusions," at no point in the brief are these assertions explained or developed. Instead, the brief contains numerous references to alleged errors and corrections made on many medical certificates he has received in

the course of his long aviation career. We fail to see how this showing advances respondent's defense. Assuming, arguendo, that these certificates were, in fact, issued in the condition represented by the respondent, they would not constitute alterations reached by the regulation, as it, logically, cannot contemplate changes to a certificate that is in the process of being created. Rather, it is, in our view, only changes to a certificate made after it has been issued that are prohibited, whether or not the changes are warranted in the interest of accuracy.

During a base inspection of respondent's Part 135 operation he presented to FAA inspectors a medical certificate that indicated a date ("12/13/2003") that was different from the date ("12/13/2002") on the official copy of the certificate maintained at the FAA Records Center. The copy of respondent's certificate, kept in his wallet, which the inspectors compared to official records, was made in his presence. If the 2003 examination date had been accurate, it would have established that when respondent performed the January 2004 flights he possessed appropriate medical certification. These factors, coupled with the law judge's implicit credibility assessment rejecting respondent's disavowal of having changed the date, provided sufficient circumstantial proof to support the alteration charge.

With regard to the respondent's suggestion that the sanction pursued by the Administrator is not appropriate, we think it apt to quote in part from the justification for emergency revocation

that the Administrator included in the complaint:

Certificate holders who intentionally alter certificates such as airman medical certificates in order to show medical qualification to perform certain types of operations, compromise the airman certification process and thereby pose a threat to air safety. Your apparent willingness to not only alter an airman medical certificate, but to present the certificate to a representative of the Administrator to show that you are in compliance with qualifications to perform commercial operations indicates a willingness to deceive and manipulate the inspection process, and further shows that you cannot be trusted to maintain the integrity of aviation's trust-based medical certification requirements. Thus, your actions...clearly reflect a lack of qualifications necessary to hold an airman certificate.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied; and
2. The June 22, 2004 decision of the law judge and the Administrator's emergency order of revocation are affirmed.

ENGLEMAN CONNERS, Chairman, ROSENKER, Vice Chairman, and CARMODY, HEALING, and HERSMAN, Members of the Board, concurred in the above opinion and order.